

Nova Law Review

Volume 25, Issue 1

2000

Article 9

Clicking on the Dotted Line: Florida's Enactment of the Uniform Electronic Transactions Act as a Boost to E-Commerce

Mark D. Earles*

*

Copyright ©2000 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <http://nsuworks.nova.edu/nlr>

Clicking on the Dotted Line: Florida's Enactment of the Uniform Electronic Transactions Act as a Boost to E-Commerce

TABLE OF CONTENTS

I. INTRODUCTION	318
II. WHAT IS THE INTERNET AND ELECTRONIC COMMERCE?.....	320
III. TRADITIONAL CONTRACT LAW AND SIGNATURES	321
A. <i>Writings</i>	321
B. <i>Signatures</i>	322
C. <i>What Are Electronic Signatures?</i>	323
IV. THE NEED FOR A UNIFORM STANDARD FOR ELECTRONIC TRANSACTIONS	324
A. <i>Uniform Acts</i>	325
1. The Uniform Computer Information Transactions Act ...	325
2. The Uniform Electronic Transactions Act.....	326
B. <i>Federal Legislation</i>	327
1. The Electronic Signatures in Global and National Commerce Act	327
2. The Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act	329
V. FLORIDA'S ELECTRONIC SIGNATURE LEGISLATION AND THE UNIFORM ELECTRONIC TRANSACTION ACT	330
A. <i>The Electronic Signature Act of 1996</i>	330
B. <i>Florida's Enactment of the Uniform Electronic Transactions Act</i>	331
1. Definitions and Applications of the Act	332
a. <i>Electronic Transactions</i>	332
b. <i>Electronic Signatures and Electronic Records</i>	333
c. <i>Government Agencies</i>	335
2. E-commerce Concerns and Why Florida's Enactment of UETA will Benefit Businesses, Consumers, and the State as a Whole	336
a. <i>Security Issues</i>	336
b. <i>Consumer Transactions</i>	337
c. <i>Business to Business Transactions</i>	340
d. <i>Attorneys and Governmental Entities</i>	341
VI. CONCLUSION.....	342

I. INTRODUCTION

In 1776, John Hancock signed his name with ink on a document known as the Declaration of Independence.¹ As the first and largest name on the Declaration, John Hancock's name has become a synonym for the word "signature."² This paper-based system of recording signatures has been an important method of communicating for hundreds of years, with contract jurisprudence being based upon the fundamental principle that a handwritten signature indicates a person's intent to transact business.³ However, since John Hancock signed the Declaration of Independence, technological advancements have led to the evolution of numerous forms of communication, such as radio, television, cable, and satellite.⁴ It is no longer necessary to sign your "John Hancock" to represent yourself. One of the newest forms of communication is the Internet, which is being combined with other technologies to create a highly advanced system of communication.⁵ This new form of electronic communication is becoming increasingly pervasive, influencing the everyday lives of all Americans.⁶ The use of the technology through computers and the Internet now means that an individual can buy, sell, or trade, by clicking a mouse, pressing a key, or typing a name. It has been suggested that we are in the midst of an electronic commerce ("e-commerce") revolution that is bigger than the industrial revolution and every other major economic shift that has preceded it.⁷ America has both the fastest growing number of Internet users and the largest proportion of e-commerce consumers in the world.⁸ By 2001–2002, total e-commerce is predicted to reach \$330 billion.⁹ The increasing trend

1. 13 THE ENCYCLOPEDIA AMERICANA 757 (Int'l ed. 1995).

2. *Id.*

3. Amelia H. Boss, *Searching for Security in the Law of Electronic Commerce*, 23 NOVA L. REV. 585, 585–86 (1999).

4. United States Internet Council, *State of the Internet: USIC's Report on Use & Threats in 1999*, at <http://www.usic.org/papers/stateoftheinternet99.htm> (last visited Aug. 2, 2000).

5. *Id.*

6. *Id.*

7. Mark Grossman, *The E-Commerce Revolution*, CYBERLAW.NEWS (Becker & Poliakoff, P.A., Fort Lauderdale, Fla.), Winter 2000, at 1; Anitesh Barua & Andrew B. Whinston, *The Internet Economy Indicators: Overview—The Big Picture*, at http://www.internetindicators.com/overview_big_picture_june_00.html (last visited Aug. 9, 2000).

8. Roper Starch Worldwide, *America is Fastest-Growing Internet Market, As Teens Lead the Way*, at <http://www.ropers.com/news/content/news127.htm> (last visited Aug. 2, 2000).

9. Organisation for Economic Co-operation and Development, *Growth of Electronic Commerce: Present and Potential*, at http://www.oecd.org/subject/e_commerce/ebooks/027-054.pdf (last visited Nov. 11, 2000).

towards using electronic transactions is based on the inefficiencies of paper-based communications.¹⁰ Some advantages of conducting business through e-commerce are that it is convenient, flexible, and efficient.¹¹ Although e-commerce has eliminated the need for slower, paper-based transactions, a number of questions have been raised in the legal system as to what constitutes a signature within an electronic transaction.¹² In addition to these questions, security concerns regarding electronic transactions have also been raised.¹³

The United States government discourages barriers to the increasing use of e-commerce to conduct business,¹⁴ and recently passed legislation that gives electronic signatures the same legally binding effect as handwritten signatures.¹⁵ At the state level, a number of states, including Florida, have adopted the 1999 Uniform Electronic Transactions Act ("UETA") to provide their own legal standard for e-commerce transactions.¹⁶ This article considers the effect of Florida's Electronic Transaction Act on businesses, consumers, and governmental entities in Florida, and the issues raised by giving electronic signatures the same legally binding effect as handwritten signatures. With the vast increase in computer use and electronic transactions in conducting business, it is important that attorneys in all areas of concentration, judges, and everyday consumers have a knowledge of the ramifications of the new legislation that gives electronic signatures the same legally binding effect as handwritten signatures and paper records.

10. Shea C. Meehan, Comment, *Consumer Protection Law and the Uniform Electronic Transactions Act (UETA): Why States Should Adopt UETA as Drafted*, 36 IDAHO L. REV. 563, 564 (2000).

11. Barua & Whinston, *supra* note 7.

12. Boss, *supra* note 3, at 587.

13. Boss, *supra* note 3, at 592.

14. The White House, *A Framework for Global Electronic Commerce*, at <http://www.ecommerce.gov/framework.htm> (July 1, 1997); U.S. Department of Commerce, *The Emerging Digital Economy*, at www.doc.gov/e-commerce/EmergingDig.pdf (June 22, 1999); see also U.S. Government Working Group on Electronic Commerce, *First Annual Report*, at <http://www.doc.gov/e-commerce/E-comm.pdf> (Nov. 1998).

15. Electronic Signatures in Global and National Commerce Act (ESGNC), Pub. L. No. 106-229, 114 Stat. 464 (2000) (to be codified at 15 U.S.C. §§ 7001-7031).

16. UNIF. ELEC. TRANSACTIONS ACT (UETA) §§ 1-21, 7A U.L.A. 20-46 (West Supp. 2000); see also FLA. STAT. § 668.50 (2000).

II. WHAT IS THE INTERNET AND ELECTRONIC COMMERCE?

The Internet is a worldwide system of computer networks,¹⁷ which transport information from stored files from one computer to others having the same Transmission Control Protocol/Internet Protocol ("TCP/IP").¹⁸ Through the Internet, computers can be used to send and receive electronic mail ("e-mail"),¹⁹ send and receive documents from other computers, and view information on the World Wide Web.²⁰

As an application of the Internet, e-commerce transactions are increasing at a rapid pace and will potentially account for a sizeable share of overall commerce.²¹ Although the term e-commerce has no widely accepted definition, it generally refers to doing business and selling goods and services on the Internet.²² These goods and services can be delivered both on-line, through a computer, or offline, being mailed in a regular fashion through the Postal Service.²³ The emphasis on a geographic location suitable for business, large amounts of capital, and retail stores are irrelevant in

17. The original purpose of the Internet was for the United States government to have a decentralized system of computers to ensure that communication would still be possible even if some were destroyed in an event such as a nuclear war. Sean Selin, *Governing Cyberspace: The Need for an International Solution*, 32 GONZ. L. REV. 365, 367 (1997). This decentralization then expanded beyond a military purpose into the commercial and educational context of computers. *Id.* The unique structure of the Internet means that it is difficult to govern. *Id.* at 368. It is not a single entity, and is not controlled by any government, company, or individual. *Id.*

18. University of California, Berkeley, *What is the Internet, the WWW, and Netscape? An Introduction*, at <http://www.lib.berkeley.edu/TeachingLib/Guides/Internet/WhatIs.html> (last modified July 19, 2000).

19. *Id.* E-mail is a medium where electronic letters, pictures, sounds, and data files can be instantly sent within a building or across the world. Paul Hoffman, *Internet Electronic Mail*, at <http://www.sciam.com/1998/0398issue/0398working.html> (last visited Aug. 3, 2000). By entering an Internet mail address, the sender of the message uses software, such as Microsoft Outlook, to send the document to another person. *Id.* The message is sent by TCP software to a mail submission server that converts the recipient's address into a numeric IP address. *Id.* Routers through the Internet then relay the message to its destination on the most efficient pathway, through data lines to the destination mail server. *Id.* This places the message in the recipient's mail box, and the recipient can then use software to display the message. *Id.*

20. University of California, Berkeley, *supra* note 18.

21. JONATHAN COPPEL, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *E-COMMERCE: IMPACTS AND POLICY CHALLENGES* 3 (Econ. Dep't Working Papers No. 252, 2000).

22. *Id.* at 4.

23. *Id.*

e-commerce transactions.²⁴ E-commerce transactions come in a number of forms, for instance, business to business, between businesses and consumers, or from consumer to consumer.²⁵ By using e-commerce, thousands of businesses and consumers now have ease of access for the opportunity to generate and spend revenue.²⁶

III. TRADITIONAL CONTRACT LAW AND SIGNATURES

A. Writings

Some contracts require a writing to be held enforceable, and most of the United States have adopted some modified form of the Statute of Frauds, originally an English statute passed in 1677.²⁷ The main provision of the Statute of Frauds states that no law suit can be maintained on certain types of contracts unless they are in writing and signed by the party involved, or by an authorized agent.²⁸ The types of contracts included under the Statute of Frauds are those for the sale of goods over \$500, contracts for the sale of land, contracts which cannot be performed within one year, and contracts that guaranty the debt of another.²⁹ The formal requirements of the Statute of Frauds have been incorporated by both the Uniform Commercial Code ("UCC")³⁰ and Florida's own version of the UCC.³¹

Although a writing requirement is not always needed to form a binding contract, parties often formalize an agreement in writing after negotiating a transaction.³² Traditionally, writing requirements have been used to ensure that terms of a document are fixed.³³ If there are any ambiguities regarding the parties' intent within a transaction, courts generally limit their interpretation of the agreement to what is contained in the text of the

24. Global Information Infrastructure Commission, *GIIC Recommendations for Promoting the Use of Electronic Commerce*, at <http://www.giic.org/focus/ecommerce/ecrecs.html> (last visited Aug. 3, 2000).

25. COPPEL, *supra* note 21, at 4.

26. Kalama M. Lui-Kwan, *Recent Developments in Digital Signature Legislation and Electronic Commerce*, 14 BERKELEY TECH. L.J. 463 (1999).

27. BLACK'S LAW DICTIONARY 661 (6th ed. 1990).

28. *Id.* at 662.

29. *Id.*

30. U.C.C. § 2-201(1) (1989).

31. FLA. STAT. § 672.201 (2000); *see also* 45 FLA. JUR. 2D *Sales and Exchanges of Goods* § 30 (1984).

32. JOHN D. CALAMARI & JOSEPH M. PERILLO, *THE LAW OF CONTRACTS* § 2.8 (4th ed. 1998).

33. Adam White Scoville, *Clear Signatures, Obscure Signs*, 17 CARDOZO ARTS & ENT. L.J. 345, 356 (1999).

document.³⁴ The *Restatement (Second) of Contracts* states that a writing is acceptable if it reasonably identifies the subject matter of a contract, is sufficient to indicate that a contract has been made, and states the essential terms of the promises contained in the contract with reasonable certainty.³⁵

B. Signatures

In contrast to writings, signatures are attached to documents for the purpose of authentication, and to demonstrate a signer's intent to be bound by what is written.³⁶ A signature can be defined as any mark, sign, or symbol on an instrument or document that signifies knowledge, approval, or acceptance of an obligation,³⁷ or something that an individual may use to represent herself.³⁸ In addition to handwritten signatures, it has also been recognized, unless stated otherwise by a statute, that a genuine signature may be one that is stamped, typewritten, engraved, or faxed.³⁹ It is the signer's intent rather than the form of a signature that determines whether a signature is legal.⁴⁰

Along with showing evidence of a person's intent, a secondary purpose of a signature can be to identify the person signing a document or to show the integrity of a document.⁴¹ As suggested by Smedinghoff and Hill-Bro,⁴² these secondary purposes become important in the electronic world, because of the potential for electronic transactions to be altered.⁴³ Potential damage to the integrity of an electronic document may be inflicted by a computer hacker, or someone attempting to commit fraud.⁴⁴ Furthermore, the identity of the sender and the integrity of the document hold great importance in electronic transactions, because the transactions can be anonymous and

34. *Id.*

35. RESTATEMENT (SECOND) OF CONTRACTS § 131 (1981).

36. 80 C.J.S. *Signatures* § 1(a) (1953); *see also* Scoville, *supra* note 33, at 356.

37. 80 C.J.S. *Signatures* § 1(a) (1953).

38. *Id.*

39. *Id.* § 7; *see also* State v. Hickman, 189 So. 2d 254, 258 (Fla. 2d Dist. Ct. App. 1966).

40. William E. Wyrough, Jr. & Ron Klein, *The Electronic Signature Act of 1996: Breaking Down Barriers to Widespread Electronic Commerce in Florida*, 24 FLA. ST. U. L. REV. 407, 420 (1997).

41. Thomas J. Smedinghoff & Ruth Hill Bro, *Moving With Change: Electronic Signature Legislation As a Vehicle for Advancing E-Commerce*, 17 J. MARSHALL J. COMPUTER & INFO. L. 723, 731 (1999). The integrity of a document could be shown by initialing pages of a document before it is signed to prevent pages being substituted. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

occur over thousands of miles without the parties ever meeting or exchanging any papers.⁴⁵ Although most handwritten signatures are used merely to indicate a signer's intent, electronic signatures in an e-commerce transaction can identify the sender of a document, indicate the sender's intent to be bound by the contractual terms, and ensure the integrity of the document that has been signed.⁴⁶ Based on traditional contract law and signatures, a name typed at the end of an e-mail should qualify as a signature, as long as the person signing the e-mail had an intent to contract.⁴⁷

C. *What Are Electronic Signatures?*

With the development of e-commerce, traditional paper-based signatures have been replaced by electronic signatures.⁴⁸ As a result, legislation has been directed toward the types of documents and signatures that can be electronically created, communicated and stored.⁴⁹ These electronically generated signatures are referred to as either "electronic signatures" or "digital signatures."⁵⁰ Although these terms are often used interchangeably, each has its own distinct meaning.⁵¹ An electronic signature is a broadly used, technology-neutral term which embraces all the methods by which an individual can sign an electronic record or transaction.⁵² An electronic record is a record that is "created, generated, sent, communicated, received, or stored by electronic means."⁵³ Electronic signatures can take numerous forms, including a faxed writing,⁵⁴ a name typed in an e-mail message,⁵⁵ a secret code, as used in a personal identification number of an automated teller machine with a credit card,⁵⁶ a biometric identifier using physical characteristics such as face, finger prints, and retinas,⁵⁷ or digital signatures.⁵⁸

45. Smedinghoff & Hill Bro, *supra* note 41, at 732.

46. *Id.*

47. *Id.* at 737.

48. Wyrough, Jr. & Klein, *supra* note 40, at 421.

49. Smedinghoff & Hill Bro, *supra* note 41, at 729.

50. *Id.*

51. *Id.*

52. *Id.* at 730.

53. FLA. STAT. § 668.50(2)(g) (2000).

54. Wyrough, Jr. & Klein, *supra* note 40, at 421.

55. Smedinghoff & Hill Bro, *supra* note 41, at 730.

56. *Id.*

57. *Id.*

58. *Id.*

In contrast, a digital signature is a specific term for one type of electronic signature.⁵⁹ It is a stamp that a signer places on documents or data which is unique to that signer.⁶⁰ For a digital signature to be produced and used, a signer will have both a "public key" and a "private key."⁶¹ The public and private keys are used in electronic documents to encrypt and scramble information, leaving only the person with the appropriate key as being able to unscramble the information to make it readable again.⁶² Anyone can gain access to the signer's public key, but only the signer can use her private key.⁶³ In conjunction with the appropriate software, a signer can use her private key to encrypt and scramble information contained in a document, thus attaching her digital signature.⁶⁴ When the document with the digital signature is passed to another person, the person who receives the document can decrypt the signature by using the signer's public key.⁶⁵ If the unscrambling of the document is successful, it proves that the signer signed the document, and if the message is the same as that which was created, the recipient knows that the signed data has not been altered.⁶⁶ If the original message was forged or altered, and the private key did not correspond to the public key used, the recipient would not be able to decrypt the message.⁶⁷

IV. THE NEED FOR A UNIFORM STANDARD FOR ELECTRONIC TRANSACTIONS

A fundamental issue that e-commerce raises is whether the electronic records and electronic signatures generated by transactions within e-commerce "meet legal formalities such as the writing and signature requirements imposed by a variety of statutes and regulations"⁶⁸ Under traditional contract law, electronic transactions, such as those with a faxed signature, should be legally binding.⁶⁹ Statutes and regulations requiring transactions to be in writing are considered barriers that need to be removed to allow the development and increase of e-commerce transactions.⁷⁰

59. *Id.*

60. David M. Nadler & Valerie M. Furman, *House Passes Digital Signature Act*, CYBERSPACE LAW, Dec. 1999, at 17.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Nadler & Furman, *supra* note 60, at 17.

66. *Id.*

67. *See id.*

68. Smedinghoff & Hill Bro, *supra* note 41, at 733.

69. *Id.* at 735-36.

70. *Id.* at 734.

However, because of a lack of specific statutory guidelines, coupled with a lack of uniformity in court decisions among jurisdictions, the legality of electronic signatures has been questioned.⁷¹

A. *Uniform Acts*

1. The Uniform Computer Information Transactions Act

The Uniform Computer Information Transactions Act ("UCITA") has been developed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").⁷² This Act includes substantial provisions on electronic signatures, and provides a comprehensive uniform law for computer information licensing.⁷³ The purpose of UCITA is to provide a set of rules for creating and adopting electronic contracts by using the traditional principles of contract law.⁷⁴ Examples of computer information that could be subject to UCITA include computerized databases, computerized music, access contracts to sites on and off the Internet containing computer information, and software such as diskettes and compact discs, which may be used to hold computer information.⁷⁵ UCITA is limited to commercial licensing.⁷⁶ Similar to the common law understanding of signatures, UCITA sees signatures as being a method to show a signer's intent to authenticate a document.⁷⁷

71. *Id.* at 737; *see also* Parma Tile Mosaic & Marble Co. v. Short, 663 N.E.2d 633, 634 (N.Y. 1996) (holding that a heading, including a name on a fax, does not constitute a signature for the writing requirement under the Statute of Frauds).

72. Carol A. Kunze, *The ETA Forum*, at <http://www.webcom.com/legaled/ETAForum/bkgd.html> (last modified July 11, 1999). The NCCUSL began in 1892 as a conference attended by commissioners from seven states and by 1912 every state had representation. *Id.* It is a nonprofit, unincorporated association of over 300 commissioners on uniform laws that represent all fifty states. *Id.* The commissioners are mostly judges, practicing attorneys, and professors of law. *Id.* The main task of the NCCUSL is to determine which areas of the law would benefit from a uniform standard for a law, and to write and recommend these uniform laws to provide state legislatures with a model for enactment. *Id.*

73. Uniform Law Commissioners, *A Few Facts About Uniform Computer Information Transactions Act*, at http://www.nccusl.org/uniformact_factsheets/uniformacts-fs-ucita.htm. (last visited Aug. 4, 2000).

74. *Id.*

75. Uniform Law Commissioners, *Summary: Uniform Computer Information Transactions Act*, at http://www.nccusl.org/uniformact_summaries/uniformacts-s-ucita.htm (last visited Aug. 4, 2000).

76. Scoville, *supra* note 33, at 356.

77. *Id.*

2. The Uniform Electronic Transactions Act

To help create certainty and uniformity in the field of electronic transactions, the NCCUSL established a drafting committee to develop a uniform act to establish a legal standard for the recognition of electronic records and electronic signatures.⁷⁸ The uniform law generated by this committee is known as the Electronic Transactions Act, and was approved and recommended for enactment in all the states in 1999.⁷⁹ The Act attempts to remove barriers to e-commerce,⁸⁰ with limited purposes to ensure that electronic records are given the same recognition as a piece of paper, and that electronic signatures are given the same legal effect as manual signatures.⁸¹ It does not attempt to provide a new standard of legislation governing all electronic commerce, and it does not effect the substantive rules of contracts.⁸² UETA applies only to electronic signatures and records relating to a transaction, not to all writings and signatures, and not those governed by most of the UCC.⁸³ It is a procedural statute that does not require electronic signatures or records to be used, but provides a standard for governing these transactions.⁸⁴ The commissioners also make it clear that the Act is not a digital signature statute.⁸⁵ Where a state has a statute governing digital signatures, the Act is not designed to replace that legislation, but to support and compliment that statute.⁸⁶

Both the Uniform Law commissioners and legal scholars have encouraged the states to adopt UETA. They have advanced a number of reasons as to why UETA should be adopted in its entirety, including the fact that it defines and validates electronic signatures, it removes the barriers to e-commerce, it assures that people can choose between paper or electronic based methods of transacting business, it does not affect consumer protection laws, and it encourages state governments to use electronic communi-

78. Kunze, *supra* note 72.

79. *Id.*

80. Uniform Law Commissioners, *Why States Should Adopt the Uniform Electronic Transactions Act*, at http://www.nccusl.org/uniformact_why/uniformacts-why-ueta.htm. (last visited Aug. 4, 2000).

81. Uniform Law Commissioners, at http://www.nccusl.org/uniformact_summaries/uniformacts-s-veta.htm (last visited Aug. 4, 2000).

82. Uniform Law Commissioners, *supra* note 75.

83. *Id.* The reason that most contracts governed by the UCC are excluded is because most articles of the UCC already deal with the use of electronic records. Meehan, *supra* note 10, at 568.

84. Uniform Law Commissioners, *supra* note 75.

85. UETA, Prefatory Note, 7A U.L.A. 17-19 (West Supp. 2000).

86. *Id.*

cations and records.⁸⁷ UETA applies to both commercial and many non-commercial signatures, and although UETA and UCITA are designed to compliment each other, UETA has a wider scope and uses a broader definition of an electronic signature.⁸⁸ In contrast to UCITA, UETA requires a signature with intent to associate the person with a particular record.⁸⁹

So far, UETA has been adopted by a number of states, including California, Florida, Pennsylvania, Utah, and Virginia, and introduced in a number of others, such as Delaware, Michigan, and New Jersey.⁹⁰ With the increasing use and concerns about electronic transactions, it seems likely that other states will also adopt UETA in the near future. A further reason advanced for adopting UETA in its entirety is that preemptive federal regulations may be financially burdensome to the states if they adopt non-uniform amendments.⁹¹

B. Federal Legislation

1. The Electronic Signatures in Global and National Commerce Act

In addition to the NCCUSL, the United States government also recognizes that traditional laws and regulations can hinder the development of e-commerce.⁹² As both a national and international marketplace, the government states that the Internet needs to be governed by a legal framework that is consistent and predictable at the state, national, and international level, regardless of the jurisdiction in which a buyer or seller makes the transaction.⁹³ After consideration of a number of bills, Congress recently passed the Electronic Signatures in Global and National Commerce Act ("ESGNC"), being signed into law by President Clinton on June 30, 2000.⁹⁴ After signing the legislation, the President stated that by providing a

87. Uniform Law Commissioners, *supra* note 81; Meehan, *supra* note 10, at 563.

88. Scoville, *supra* note 33, at 356.

89. *Id.*

90. Carol A. Kunze, *What's happening to UETA in the States*, at <http://www.uetonline.com/hapstate.html> (last modified July 9, 2000). According to UETA online, the full list of states that have adopted the UETA to date are Arizona, California, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, and Virginia. *Id.* The states that have introduced UETA are Alabama, California, Colorado, Delaware, District of Columbia, Hawaii, Michigan, New Jersey, North Carolina, Rhode Island, Vermont, and West Virginia. *Id.*

91. Meehan, *supra* note 10, at 564.

92. Global Information Infrastructure Commission, *supra* note 24.

93. *Id.*

94. ESGNCA, Pub. L. No. 106-229, § 101(a) 114 Stat. 464 (2000) (to be codified at 15 U.S.C. §§ 7001-7031).

legal standard for electronic contracts and signatures, there will be new frontiers of economic opportunity, while still protecting the rights of American consumers in the largest economic expansion in history.⁹⁵

As a member of the Committee on Commerce, Science, and Transportation, Senator Spencer Abraham, introduced ESGNCA as Senate Bill 761⁹⁶ on March 5, 1999, to regulate interstate commerce by electronic means by allowing and encouraging the increased use of e-commerce through free market forces.⁹⁷ The Act states that a signature, contract, or other record of a transaction cannot be denied legal effect, validity, or enforceability, solely on the basis that it was formed by an electronic record or electronic signature.⁹⁸ There is no requirement that any person has to agree to use or receive electronic signatures or electronic records.⁹⁹ Also, it does not affect statutes, regulations, or rules of law, other than to the extent that they require contracts or records to be written or signed by non-electronic means.¹⁰⁰ In developing the Act, Congress intended to have the marketplace, rather than governments, control the continued growth and development of e-commerce.¹⁰¹

Where information relating to a transaction is required to be made available to a consumer in writing, the use of an electronic record can be used to meet this requirement.¹⁰² By providing consumers with the right not to use electronic records or signatures to conduct transactions, the Act states that an electronic record can only be used to satisfy the writing requirement of a statute, regulation, or rule of law if a consumer consents to it, and does not later withdraw that consent.¹⁰³ Specifically, prior to consenting, consumers must be given a clear and conspicuous statement that they can withdraw their consent, and that they can have the record made available in a non-electronic form.¹⁰⁴ A statement of the hardware and software that will be needed to access and retain electronic records is also required, along with

95. The White House, *Signing of Electronic Signatures in Global and National Commerce Act*, at http://www.whitehouse.gov/WH/New/html/electronic_signatures_text.html. (last visited Aug. 4, 2000).

96. In Senate Bill 761, the Act was called the "Millennium Digital Commerce Act." S. 761, 106th Cong. § 1 (1999).

97. *Id.*

98. ESGNCA, Pub. L. No. 106-229, § 101(a), 114 Stat. 464, 464 (2000) (to be codified at 15 U.S.C. §§ 7001-7031).

99. § 101(b).

100. *Id.*

101. COMM. ON COMMERCE, SCI., & TRANSP., *MILLENNIUM DIGITAL COMMERCE ACT*, S. REP. No. 106-131, at 5 (1999).

102. § 101(c).

103. *Id.*

104. *Id.*

the procedures consumers need to follow to withdraw consent and receive a non-electronic record.¹⁰⁵ If consumers consent electronically, it must be reasonably demonstrated that they will be able to access the information in its electronic form.¹⁰⁶ However, the failure to obtain electronic consent or confirmation from a consumer cannot be the sole basis in denying the validity of a contract.¹⁰⁷ An electronic signature can also be used as notarization for a transaction where a statute or other law requires this authorization.¹⁰⁸

Although ESGNCA is intended to give electronic signatures and records the same legally binding effect as handwritten signatures, there are some specific exceptions.¹⁰⁹ The Act does not apply to contracts governed by statutes or other laws regarding the creation and execution of wills, codicils or testamentary trusts, divorce, adoption, or other matters of family law, and a majority of sections of the UCC.¹¹⁰ Furthermore, the Act can preempt state electronic signature laws, but a state law will not be preempted if it is an adoption of UETA,¹¹¹ or the law is an alternative method for achieving the same recognition of electronic records and signatures and consistent with the principles contained in ESGNCA.¹¹²

2. The Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act

The definitions of terms in ESGNCA, such as electronic record, electronic signature, person, and transaction, are consistent with those contained in UETA.¹¹³ In regulating and encouraging a uniform standard for electronic signatures and records, the government does not intend to preempt

105. *Id.*

106. *Id.*

107. § 101(c)(3), 114 Stat. at 466.

108. § 101(g), 114 Stat. at 467.

109. § 103, 114 Stat. at 468.

110. § 103(a). Further exceptions include court orders and official court documents, such as briefs and pleadings, the cancellation or termination of utilities, repossession or default under credit or rental agreements, the cancellation or termination of either health or life insurance benefits, the recall of a product for health and safety reasons, and documentation regarding the transportation or handling of toxic or dangerous materials. § 103(b)(1).

111. § 102(a)(1).

112. *Id.*; see Patricia Brumfield Fry, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, at <http://www.uetonline.com/docs/pfry700.html> (last visited Aug. 4, 2000).

113. COMM. ON COMMERCE, SCIENCE, AND TRANSP., *MILLENNIUM DIGITAL COMMERCE ACT*, S. REP. NO. 106-131, at 5 (1999).

or overrule state law enactments of UETA.¹¹⁴ The gradual enactment of UETA by the states is similar to the situation that occurred when the NCCUSL released the UCC, where the uniform act was not adopted in every state simultaneously.¹¹⁵ There was a transition period with the status of commercial law being somewhat unclear, while states debated and considered the ramifications of the UCC before deciding to approve its enactment.¹¹⁶ The Committee on Commerce, Science, and Transportation recognizes that effects of the transition period seen when the states were considering and adopting the UCC will be the same for the enactment of UETA.¹¹⁷ In achieving the goal of a uniform standard for contracts generated by electronic methods, the federal legislation provides uniformity, even among those states that have either not yet adopted or chosen not to adopt UETA.¹¹⁸

V. FLORIDA'S ELECTRONIC SIGNATURE LEGISLATION AND THE UNIFORM ELECTRONIC TRANSACTION ACT

A. *The Electronic Signature Act of 1996*

In a step to encourage the development of e-commerce in Florida, the legislature passed the Electronic Signature Act of 1996.¹¹⁹ Similar to UETA and ESGNCA, this Act provides that an electronic signature may be used to sign a writing and may be given the same force and effect as a written signature.¹²⁰ The intent of the legislature in adopting this Act was to enhance public confidence in the use of electronic signatures, minimize forged electronic signatures and fraud in e-commerce, encourage economic development in the state, and allow government the opportunity to provide its services by electronic communications.¹²¹ Differences between electronic signatures and digital signatures are defined in this Act,¹²² and it gives both forms of communication, including future forms of electronic signatures, the same legal effect as written signatures.¹²³ Many electronic signature statutes incorrectly use technology-specific terminology in referring to a digital

114. S. REP. No. 106-131, at 2.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. FLA. STAT. §§ 668.001--006 (2000).

120. § 668.004.

121. § 668.002.

122. § 668.003.

123. Wyrrough, Jr. & Klein, *supra* note 40, at 420.

signature to refer to all the ways in which an electronic signature can be generated.¹²⁴ However, Florida correctly recognizes that a digital signature is generated by an asymmetric cryptosystem where a public key can be used to determine whether the document was created by the signer's private key, and whether the original message has been altered in any way.¹²⁵

B. *Florida's Enactment of the Uniform Electronic Transactions Act*

On May 26, 2000, Governor Jeb Bush signed Florida's adoption of UETA into law, becoming effective on July 1, 2000.¹²⁶ The Florida Legislature followed the wording of UETA almost in its entirety, since the Florida enactment has the same legislative intent as both UETA and ESGNCA, which is to remove barriers to e-commerce.¹²⁷ As a consequence of the Act, electronic signatures and records can now be used to satisfy a provision of law that requires a signature or a record to be in writing.¹²⁸ In the Electronic Signature Act of 1996, Florida already has a digital signature law.¹²⁹ As UETA is not a digital signature law, Florida's adoption of UETA both supports and compliments the Electronic Signature Act of 1996.¹³⁰

The federal government recognizes UETA as valid legislation to promote and develop e-commerce and as an exception to ESGNCA.¹³¹ By adopting UETA, Florida's legislation will not be preempted by the recently passed federal Act.¹³² In regulating interstate commerce through ESGNCA, the federal government has allowed states to retain some independence in adopting their own standard for electronic transactions.¹³³ It is possible that some states may have, or may adopt, their own legislation concerning standards for electronic transactions. However, when businesses and consumers in Florida are involved in electronic transactions with parties from other states, there should be no concern that the principles contained in Florida's adoption of UETA will be undermined or invalidated by differing state legislation. Based on the principles of the Supremacy Clause in the

124. Smedinghoff & Hill Bro, *supra* note 41, at 729-30.

125. § 282.72; see Smedinghoff & Hill Bro, *supra* note 41, at n.25.

126. Ch. 2000-164, § 42, 2000 Fla. Laws 972, 1013.

127. See HOUSE OF REPRESENTATIVES COMM. ON UTILS. & COMMS. ANALYSIS & ECON. IMPACT STATEMENT ON BILL NO. CS/HB 1891, at 2 (Comm. Print 2000) [hereinafter ANALYSIS CS/HB 1891].

128. FLA. STAT. § 668.50(7) (2000).

129. §§ 282.70-.75.

130. ANALYSIS CS/HB 1891, *supra* note 127.

131. See ESGNCA, Pub. L. No. 106-229, § 102, 114 Stat. 464 (2000) (to be codified at 15 U.S.C. §§ 7001-7031).

132. § 102, 114 Stat. at 467-68.

133. See § 103, 114 Stat. at 468.

United States Constitution,¹³⁴ states having legislation that directly conflicts with ESNCA will be required to follow the federal law that requires a uniform national standard for electronic transactions. By enacting UETA, the Florida legislature has ensured that any disputes between businesses or consumers in Florida and out-of-state parties, from a state which has legislation that does not follow federal standards, will be governed by the standards for electronic transactions contained in Florida's UETA.

1. Definitions and Applications of the Act

a. *Electronic Transactions*

While giving electronic transactions generated by electronic records and electronic signatures the same effect as those written on paper, these transactions are limited to those between two or more people in the context of business, insurance, or governmental affairs.¹³⁵ As defined in UETA, transactions may include recurring weekly or monthly orders between companies that have agreed to methods and manners of their transactions, individuals making purchases from an Internet site, and the closing of business transactions by facsimile or e-mail.¹³⁶ UETA does not apply to the creation and execution of wills, codicils, or testamentary trusts.¹³⁷ The reason for this is because electronic transactions in UETA must be between two or more persons.¹³⁸ Wills, codicils, and testamentary trusts are unilateral acts.¹³⁹ Also, the Act does not apply to UCITA, rules relating to judicial procedure, or the UCC, with the exception of sections 671.107, 671.206 and chapters 672 and 680 of the *Florida Statutes*.¹⁴⁰ Although UETA does not

134. U.S. CONST. art. VI.

135. FLA. STAT. § 668.50(2)(p) (2000).

136. UETA § 2 cmt. 12, 7A U.L.A. 24 (West Supp. 2000).

137. FLA. STAT. § 668.50(3)(b) (2000).

138. § 3 cmt. 4.

139. *Id.*

140. FLA. STAT. § 668.50(3) (2000). Section 671.107 of the *Florida Statutes* states that "[a]ny claim or right arising out of an alleged breach can be discharged . . . without consideration by a written waiver or renunciation signed and delivered by the aggrieved party." § 671.107.

Section 671.206 of the *Florida Statutes* provides that, except in the cases of a contract for the sale of goods, securities, or security agreements, a contract for the sale of personal property is not enforceable as an action or a defense if the value exceeds, or the remedy sought, is in excess of \$5000, unless there is a writing between the parties that there is a contract, at a stated price, with the subject matter reasonably identified, and signed by the party against whom enforcement is sought, or his or her authorized agent. § 671.206.

apply to UCITA, Florida has not formally enacted UCITA, and there does not appear to be a comparable act in the laws of Florida.¹⁴¹

b. *Electronic Signatures and Electronic Records*

The U.S. government has expressed a desire that laws relating to e-commerce should be technology-neutral, meaning that one particular technology should not be required or favored over another.¹⁴² This encourages the development of new technology to transact business.¹⁴³ Given the constant changing nature of computer technology, future forms of electronic communications will develop rapidly, and it is not possible to accurately predict what communication forms will be used to transact business in the future.¹⁴⁴ Therefore, having technology-neutral legislation governing e-commerce also ensures laws will still be applicable when new forms of communication are developed.¹⁴⁵ By being technology-neutral, UETA fulfills the desire of the federal government.¹⁴⁶

In UETA, an electronic signature is defined as an "electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."¹⁴⁷ Therefore, a person's voice on an answering machine or typing a name in an e-mail will be sufficient to meet the legal requirement of a signature, as long as there is an intent to execute or adopt the sound, symbol, or process for the purpose of signing a record.¹⁴⁸ Furthermore, a computer program or other automatic method of communication can be used to form a contract even if the terms and conditions of the agreement were not reviewed.¹⁴⁹ For example, clicking "I agree" for the receipt of goods or services from an Internet site will be legally enforceable, if this is coupled with an intent to sign and the person was free to refuse the terms and conditions of the agreement.¹⁵⁰ A signature will be attributable to actions taken by a person, or an authorized agent, based on factors such as a name on the letterhead of a

141. SENATE STAFF ANALYSIS & ECON. IMPACT STATEMENT ON BILL NO. CS/SB 2416 (Comm. Print 2000) [hereinafter ANALYSIS CS/HB 2416].

142. See The White House, *supra* note 14.

143. See also Smedinghoff & Hill Bro, *supra* note 41, at 760–61.

144. Scoville, *supra* note 33, at 356.

145. Smedinghoff & Hill Bro, *supra* note 41, at 731. The integrity of a document could be shown by initialing pages of a document before it is signed to prevent pages being substituted. *Id.*

146. *Id.* at 739.

147. FLA. STAT. § 668.50(2)(h) (2000).

148. UETA § 2 cmt. 7, 7A U.L.A. 23 (West Supp. 2000)

149. FLA. STAT. § 668.50(14) (2000).

150. UETA § 14 cmt. 3, 7A U.L.A. 38 (West Supp. 2000).

fax, a typed name in an e-mail, a coded PIN number, or a combination of public and private keys.¹⁵¹ Once an electronic signature or record has been attributed to a person, its effect will be determined from the context of the surrounding circumstances at the time the record or signature was created, adopted, or executed.¹⁵²

Electronic records can be computer equipment and programs, e-mail, voice mail, fax transmissions, audio and video tape recordings, and information stored on computer hard drives or diskettes.¹⁵³ Under UETA, if a law requires that a record be maintained, this requirement can be met by retaining an electronic record of the information, as long as the record accurately reflects the information as it was first generated and is accessible for later reference.¹⁵⁴ Laws requiring a record to be maintained in an original form may be satisfied by having an electronic record.¹⁵⁵ Written records can now be converted to electronic records, including the retention or production of original canceled checks.¹⁵⁶

Although it can be argued that information copied from the hard drive of a computer to a floppy disk is not information in its original form, the focus and concern of this section of the Act aims more towards the integrity of the information.¹⁵⁷ In recognizing that information stored on floppy disks is more prone to disintegration and generally less stable than information stored on a hard drive, the accessibility of the information requirement in UETA must always be satisfied to validate electronically stored information.¹⁵⁸ Electronic records can also be used to satisfy a law that requires a person to retain records for evidentiary reasons, audits, or any other purpose.¹⁵⁹ Their admissibility into evidence cannot be denied solely on the basis that the record or signature is in an electronic form.¹⁶⁰

As paper is a tangible form, it is difficult to create an electronic token which embodies the intangible rights and obligations that paper negotiable instruments can provide.¹⁶¹ However, UETA includes a section whereby business parties can gain some of the benefits of negotiability in the electronic world.¹⁶² Section 16 of UETA provides a way to avoid the space

151. § 9 cmt. 4.

152. FLA. STAT. § 668.50(15)(a) (2000).

153. UETA § 2 cmt. 4, 7A U.L.A. 22 (West Supp. 2000).

154. FLA. STAT. § 668.50(12)(a) (2000).

155. UETA § 12(d), 7A U.L.A. 36 (West Supp. 2000).

156. § 12 cmt. 6.

157. § 12 cmt. 1.

158. § 12 cmt. 3.

159. FLA. STAT. § 668.50(12)(f) (2000).

160. UETA § 13, 7A U.L.A. 37 (West Supp. 2000).

161. § 16 cmt. 1.

162. *Id.*; see also FLA. STAT. § 668.50(16) (2000).

requirements that are needed to store numerous paper notes and documents and protect against the natural disasters that can destroy the types of documents required to be kept by paper instruments for purposes of being retained, retrieved, or delivered.¹⁶³ The meaning of a transferable record under this section only refers to the creation of the equivalent of paper promissory notes and documents, and those electronic records that would qualify as negotiable promissory notes or documents if they were in writing.¹⁶⁴ The issuer of an electronic record must expressly agree that it is a transferable record.¹⁶⁵ Conversion of a paper note to an electronic record is not possible because the issuer would not be the issuer of the electronic record.¹⁶⁶

If a law requires a signature or record to be notarized, electronic signatures can be used to fulfill that requirement if the notarized signature is attached with the signature or record.¹⁶⁷ Furthermore, an electronic notarization is legitimate without a rubber stamp or an impression type seal.¹⁶⁸ Florida's enactment of UETA adds an additional requirement to the uniform law in that first-time applicants for a notary commission must show proof that they have completed at least three hours of instruction, including instruction on electronic notarization, about the duties of a notary public.¹⁶⁹ However, there is no similar requirement for those who are already notaries to comply with this section upon their renewal or subsequent commission because they have to reapply for appointment every four years.¹⁷⁰

c. *Government Agencies*

Under sections 17 and 18 of UETA, government agencies in Florida have their own choice about whether they will use electronic records, and if they choose to use them, the extent to which they will create, retain, or use electronic signatures and electronic records or convert written materials into an electronic form.¹⁷¹ This applies to interactions both internally, among other government agencies, and externally, as a commercial party, when dealing with the private sector.¹⁷² Although these sections do not require

163. UETA § 16 cmt. 1, 7A U.L.A. 41 (West Supp. 2000).

164. *Id.*

165. FLA. STAT. § 668.50(16) (2000).

166. UETA § 16 cmt. 1, 7A U.L.A. 41 (West Supp. 2000).

167. FLA. STAT. § 668.50(11)(a) (2000).

168. *Id.*

169. FLA. STAT. § 668.50(11)(b) (2000).

170. ANALYSIS CS/HB 2416, *supra* note 141.

171. FLA. STAT. § 668.50(17)–(18) (2000).

172. UETA § 19 cmt. 1, 7A U.L.A. 45 (West Supp. 2000).

government agencies to use or accept electronic records or electronic signatures, they must recognize electronic records for evidentiary, audit, and other similar purposes.¹⁷³ If a government agency does choose to use electronic records or electronic signatures, it may consult with state technology offices to determine the details of use, such as the manner and format in which electronic records must be created, sent, or stored, the type of electronic signature required, and the types of control that will be used to ensure the "integrity, security, confidentiality, and auditability of electronic records."¹⁷⁴ In choosing whether to use these electronic forms of communication, governmental agencies are required to be consistent, while retaining flexibility and adaptability, because requiring one particular system of communication may promote more barriers to e-commerce than those already in existence.¹⁷⁵ Showing its commitment to the development of e-commerce, the Florida legislature chose to adopt these sections of UETA, even though they are considered optional provisions to the Act.¹⁷⁶

2. E-commerce Concerns and Why Florida's Enactment of UETA will Benefit Businesses, Consumers, and the State as a Whole

a. *Security Issues*

On a global scale, it has been suggested that the transition from paper-based transactions to electronic communications has increased security concerns regarding the authenticity and integrity of transacting business electronically.¹⁷⁷ Some people, especially consumer rights advocates, are skeptical about giving electronic records and signatures the same legally binding effect as handwritten records and signatures, and of the increased use of e-commerce to transact business.¹⁷⁸ However, there are a number of reasons why Florida's enactment of UETA will benefit the state, businesses, and consumers. It will encourage the use of technology and business in the state, thus bringing more money and opportunities, while keeping the substantive law relating to contracts the same in the electronic world as it is for paper-based transactions.¹⁷⁹

173. FLA. STAT. § 668.50(18) (2000).

174. *Id.*

175. UETA § 19 cmt. 2, 7A U.L.A. 45 (West Supp. 2000).

176. FLA. STAT. § 668.50(17)-(19) (2000).

177. P.P. Kanthan, *Legal Aspects of Electronic Commerce and the Scope for Appropriate Legislation*, CYBERSPACE LAW, Jan. 2000, at 24.

178. Meehan, *supra* note 10, at 564.

179. Uniform Law Commissioners, *supra* note 81.

A fundamental issue raised by e-commerce is whether an individual can rely on an electronic message that he or she receive to transact some form of business and enter into binding contracts.¹⁸⁰ This reliance and trust is required to achieve the e-commerce goals of speed, efficiency, and economy.¹⁸¹ In electronic communications, the reliability usually associated with paper-based transactions, such as receiving a document signed with ink and delivered by the United States Postal Service, is not present.¹⁸² As e-commerce transactions can occur without talking or seeing another individual, making sure that a communication from a person is actually from that particular person and not a fraudulent representation may be a concern.¹⁸³ It could be argued that a manually generated ink signature on paper is an ideal method to ensure the integrity of a contract because it is difficult to forge a signature and change text that is already printed on a piece of paper.¹⁸⁴ However, even the results of handwriting experts seeking to determine the validity of a handwritten signature are not always accurate.¹⁸⁵ Furthermore, people often already rely on other forms of communication that do not use paper and handwritten ink signatures, such as signing a digitized signature for United Parcel Service parcels, faxes, and rubber-stamped signatures.¹⁸⁶ The security concerns regarding a lack of handwritten signatures and paper in e-commerce is misplaced.¹⁸⁷

b. *Consumer Transactions*

One of the major advantages of consumers being able to conduct transactions on-line will be convenience and cost savings.¹⁸⁸ Since March, customers of E*trade Securities have been able to use electronic signatures to open accounts.¹⁸⁹ Also, since July, two home loans in Broward County have been originated, signed, and recorded completely on-line through Mortgage.com, located in Sunrise, Florida.¹⁹⁰ The president of the company

180. Smedinghoff & Hill Bro, *supra* note 41, at 731.

181. *Id.*

182. *Id.* at 732–33.

183. *See id.* at 733.

184. Scoville, *supra* note 33, at 356.

185. D. Michael Risinger et al., *Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification "Expertise"*, 137 U. PA. L. REV. 731, 739.

186. Scoville, *supra* note 33, at 357.

187. *See generally id.*

188. Cindy Krisher Goodman, *Today it's O.K. to Sign on the Electronic Line*, MIAMI HERALD, Oct. 1, 2000, at E1.

189. *Id.*

190. *Id.*

stated that customers can save between \$750 and \$1000 in the cost of processing a home loan by using this form of electronic transaction.¹⁹¹ The reason for this is that the fees usually associated with paper-based transactions are eliminated.¹⁹² With regard to the potential to conduct mortgage transactions completely on-line, it is now possible to complete these transactions in ten minutes, as opposed to ninety days.¹⁹³

Some consumer advocates have expressed concern that allowing electronic signatures and records in consumer transactions will enable businesses to avoid the requirements of consumer protection statutes and exploit unwary consumers.¹⁹⁴ There may be a concern that a consumer can be forced to conduct business electronically by a seller including hidden notice or ambiguous terms in contracts.¹⁹⁵ However, UETA only applies to transactions between parties who agree to conduct transactions by electronic methods.¹⁹⁶ The agreement is determined from the context of the surrounding circumstances.¹⁹⁷ Parties to the transaction have the right to refuse to conduct future transactions electronically, and this right cannot be waived by an agreement.¹⁹⁸ Therefore, a consumer will be protected if a company places a hidden term in an e-mail or a standard contract stating that the consumer will receive all future notices, or conduct all future business with that company electronically, because this will not be considered an "agreement."¹⁹⁹ Also, consumers who agree to transact business using electronic contracts may even spend more time reviewing the details of a contract on a computer screen.²⁰⁰ They can review contractual terms at their leisure without feeling pressured into signing the contract quickly in the presence of a salesperson.²⁰¹

Once agreeing to conduct a particular transaction electronically, it will not be possible to revert to a paper-based method of communication.²⁰² This provision would not further the intent of UETA to encourage e-commerce transactions and enhance the speed and economy of business.²⁰³ In

191. *Id.*

192. *Id.*

193. Goodman, *supra* note 188.

194. Meehan, *supra* note 10, at 570.

195. *See id.* at 572.

196. FLA. STAT. § 668.50(15) (2000).

197. *See id.*

198. *Id.*

199. *See Meehan, supra* note 10, at 572; UETA § 16 cmt.

200. Kurt A. Wimmer, *E-Litigation: Clicks and Contracts*, NAT'L L.J., Sept. 27, 1999, at B18.

201. *Id.*

202. Meehan, *supra* note 10, at 577.

203. *Id.*

recognizing that companies who conduct their activities solely on-line also need protection from consumers, this provision allows these companies to conduct their business in electronic form without being forced to use and keep paper records.²⁰⁴ When a consumer agrees to conduct a transaction and receive notices or records electronically, the sender of that information cannot inhibit the ability of the recipient to store or print that record if a provision of law requires a person to provide, send, or deliver information in writing to another person.²⁰⁵ If the sender does this, the electronic record will not be enforceable against the recipient.²⁰⁶ This protection gives the ability to weaker parties in a transaction, who will likely be consumers, to record and prove the details of a transaction in court if any dispute arises.²⁰⁷ There should not be a concern that consumers may enter into transactions where they agree to receive notices at a rarely checked e-mail address.²⁰⁸ It is not unreasonable to expect people to check e-mail regularly for these notices, as they would check the regular mail for paper-based notices.²⁰⁹ The substantive laws relating to adhesion contracts and unconscionability are still applicable under UETA.²¹⁰ As consumers are able to keep records of their electronic transactions and show these records in court, with the substantive laws of contracts being unaffected by UETA, there will be no confusion or areas of ambiguity for Florida courts when they are asked to apply and enforce UETA in a lawsuit.

Any concerns that consumers may have regarding the reliability of electronic records and transactions are also misplaced, because UETA recognizes that electronic methods of communication sometimes experience technical problems and may not be successful.²¹¹ If parties to an electronic transaction agree to use a security procedure to detect changes or errors, and one party conforms while the other does not, and the person who did not conform would have been able to detect the change or error if he or she had conformed, the conforming party can avoid the effect of the change or error in the electronic record.²¹² This is a reasonable rule that protects those who follow the terms of an agreement.²¹³ Additionally, consumers are protected

204. *Id.*

205. FLA. STAT. § 668.50(8) (2000).

206. § 668.50(8)(c).

207. Symposium, *Responding to the Legal Obstacles to Electronic Commerce in Latin America*, 17 ARIZ. J. OF INT'L & COMP. L. 119, 128 (2000).

208. Meehan, *supra* note 10, at 572.

209. *Id.*

210. *Id.*; FLA. STAT. §§ 668.50(5), (6), (8) (2000).

211. Mark Grossman, *E-commerce Game Finally Gets Set of Rules*, BROWARD DAILY BUS. REV., June 27, 2000, at 2.

212. FLA. STAT. § 668.50(8) (2000); *see also* Grossman, *supra* note 211.

213. *See* Grossman, *supra* note 211.

if they experience an error while conducting business through an automated computer program.²¹⁴ For example, if consumers buy a book from Amazon.com advertised for \$25.99 after entering their credit card details on the site and agreeing to the sale, and the screen then provides a confirmation stating that "your credit card has been charged \$259.99," they will just have to notify the seller of the error and state that they did not intend to be bound by the electronic record received.²¹⁵ Consumers will then have to take reasonable steps to cooperate and correct the error or return the book.²¹⁶

Although consumer protection advocates have encouraged state legislatures to adopt non-uniform provisions of UETA,²¹⁷ Florida has correctly followed the uniform principles of UETA. In an example of adopting non-uniform amendments of UETA, California included a list of bills to be excluded from the Act.²¹⁸ However, these non-uniform amendments were predicted to have far-reaching, adverse consequences for commercial transactions, increasing the harm to commercial and consumer parties rather than following the government's principle that undue burdens should not be placed upon electronic commerce.²¹⁹ Other states have been advised to ignore following California in adopting nonuniform amendments.²²⁰

c. *Business to Business Transactions*

Substantively, UETA provides a balance between being technology-neutral and being specific enough to avoid granting inappropriate protections.²²¹ The world of business is adverse to uncertainty.²²² Before UETA, the benefits of conducting on-line business could not be maximized, because of the uncertainty in conducting electronic transactions.²²³ More Florida-based companies can now feel confident about conducting business on-line as they do not need to have such a concern that people are using false credit card information, checking account numbers, or mailing addresses.²²⁴ In addition to being substantively sound, UETA gives national,

214. FLA. STAT. § 668.50(10) (2000).

215. See Grossman, *supra* note 211.

216. *Id.*

217. Meehan, *supra* note 10, at 566.

218. Holly Towle, *The Uniform Electronic Transactions Act: The California Amendments*, CYBERSPACE LAW, Dec. 1999, at 18–19.

219. *Id.* at 19.

220. *Id.* at 21.

221. Scoville, *supra* note 33, at 392.

222. See Grossman, *supra* note 211.

223. See *id.*

224. Lui-Kwan, *supra* note 26, at 463.

multinational, and local businesses located in Florida a definite structure for contracting on-line, and there is no longer a need to be concerned with the legal effect of conducting business electronically. UETA is advantageous to businesses using electronic transactions because it preserves the ideals of freedom of contract while avoiding over-regulation.²²⁵ Many other states have also adopted UETA,²²⁶ and even if states have not yet adopted it, with ESGNCA as federal legislation, there is now definite jurisdiction over the national information infrastructure.²²⁷

d. *Attorneys and Governmental Entities*

As governmental agencies are not required to implement and use electronic signatures and records,²²⁸ Florida's enactment of UETA will not place significant financial burdens on government.²²⁹ If these agencies do choose to use electronic methods of communications, it will be beneficial for governmental administration both at the local and the state level. Florida's enactment of UETA is beneficial to attorneys because they now have a set of rules governing on-line transactions, and they will no longer have to deal with the inefficiencies of mailing hard copies of a contract to another client's attorney for a signature, then waiting before receiving a signed contract back in the mail.²³⁰ Attorneys should also not be concerned with the validity of the Act, as it is not preempted by federal legislation²³¹ and it is unlikely to raise any state constitutional issues in Florida.²³² Similarly, Florida courts also now have a standard for governing disputes regarding e-commerce transactions, allowing predictability and an equitable administration of the law. Even if a provision of the Act is found to be invalid, it will be severable from the other sections, not affecting the provisions or applications of the these sections.²³³ Although the use of e-commerce is dramatically increasing in the United States, by adopting UETA, Florida courts are unlikely to be burdened with a vast increase in litigation regarding e-commerce, electronic transactions, and UETA. In contrast, it seems that Florida's adoption of UETA will prevent lawsuits because Florida now has a defined set of legal

225. Grossman, *supra* note 211.

226. Kunze, *supra* note 90.

227. See Scoville, *supra* note 33, at 393.

228. FLA. STAT. § 668.50(17)–(18) (2000).

229. ANALYSIS CS/HB 1891, *supra* note 127.

230. See Grossman, *supra* note 211.

231. ESGNCA, Pub. L. No. 106-229, § 102(a)(1), 114 Stat. 464, 468 (2000) (to be codified at 15 U.S.C. §§ 7001–7031).

232. ANALYSIS CS/HB 1891, *supra* note 127.

233. FLA. STAT. § 668.50(20) (2000).

rules as to the status of electronic records and how to transact business on-line.

VI. CONCLUSION

By enacting UETA, consumers, businesses, and governments in Florida can now conduct business without using paper and a traditional handwritten "John Hancock." Removing some of the barriers to e-commerce, while retaining consumer protections, will be beneficial to Florida, as it will be able to avoid preemptive federal legislation, at the same time retaining some control over electronic transactions in the state. With the increasing use of the Internet and electronic forms of transacting business, there is also now a clear standard for courts in Florida to adjudicate disputes regarding e-commerce transactions. Florida will be recognized as a state that encourages electronic transactions, thus attracting businesses and increasing employment opportunities. Ultimately, there will be both an efficient administration of government and increased state revenues.

Mark D. Earles